

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
3 HONORABLE ANDRÉ BIROTTE JR., U.S. DISTRICT JUDGE
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5 UNITED STATES OF AMERICA,)
6)
7) PLAINTIFF,)
8)
9) vs.) No. CR 17-0404-AB
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JULY 7, 2021

8:07 A.M.

LOS ANGELES, CALIFORNIA

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, JULY 7, 2021

2 8:07 A.M.

3 - - -

4 THE CLERK: Calling CR 17-0404, United States of
5 America versus Arlan Wesley Harrell.

6 Counsel, please state your appearances, beginning
7 with the government.

8 MS. MYERS: Good morning, Your Honor.

9 Devon Myers on behalf of the United States. I
10 believe with me at the virtual counsel table is Lauren
11 Kupersmith.

12 Can you hear me, Your Honor?

13 THE COURT: It's very delayed. Can you disconnect
14 and try to reconnect?

15 (Brief pause in the proceedings.)

16 MS. MYERS: Devon Myers on behalf of the
17 United States. And with me at virtual counsel table is CEOS
18 DOJ trial attorney Lauren Kupersmith.

19 THE COURT: Good afternoon to you, Ms. Kupersmith.
20 And for the defense.

21 MS. SAVO: Good morning, Your Honor.

22 Kim Savo from the federal public defender on
23 behalf of Mr. Harrell. He and I are both appearing by
24 videoconferencing technology.

25 THE COURT: Good morning to you both.

1 And, Mr. Harrell, I just want to confirm with
2 you -- we've done this numerous times, but I want to confirm
3 with you -- is it okay with us to proceed via
4 videoconferencing due in large part because of the COVID-19
5 pandemic?

6 THE DEFENDANT: Yes, sir. That's okay with me.
7 Thank you.

8 THE COURT: All right. So let's just cut to the
9 chase here. What are we going to do about this factual
10 basis? Are we at an impasse? Where are we?

11 Ms. Myers, can you speak first on this?

12 MS. MYERS: Yes, Your Honor.

13 The government -- there is not a lot of difference
14 between our proposed factual basis and Ms. Savo's proposed
15 factual basis.

16 The government's concern is that Ms. Savo's
17 proposed factual basis just reduces the post to the language
18 of sexually explicit conduct or lascivious exhibition of the
19 genitals which is reversing to the statutory language.

20 And as the government submitted in its filing, our
21 concern is that, if that is the extent of the admission by
22 the defendant, then he may be able to later claim that his
23 plea was not knowing and voluntary.

24 And so, Your Honor, that's why we have included
25 the descriptions of what happened in the posts in our

1 proposed factual basis so that the Court can be assured that
2 there is a knowing and informed voluntary plea here.

3 I don't know if the Court needs more but --

4 THE COURT: As it relates to that, obviously, I
5 know the issue is whether or not -- to ensure whether or not
6 that the plea is knowing and voluntary.

7 Tell me why you believe you need the facts
8 specifically as it relates to the images as opposed to
9 language that says, "visual depictions of child pornography
10 or minors engaged in sexually explicit conduct"?

11 MS. MYERS: Because I think that the -- it's not
12 always clear what "engaged in sexually explicit conduct"
13 means, Your Honor.

14 THE COURT: Okay.

15 Ms. Savo, tell me -- what's your issue -- let's be
16 candid here. What's the issue about describing what the
17 government believes it would prove if the case went to trial
18 and as it relates to some of these images to avoid the
19 problem that Ms. Myers related?

20 I get the whole notion Rule 11, whether it
21 requires it or not. But I do have a concern about later
22 down the line someone, whether it's Mr. Harrell or anyone,
23 can come in later and say, "Well, I didn't know what
24 sexually explicit conduct meant. My lawyer and I never
25 talked about that. I didn't understand, or I didn't

1 understand what she was saying." So tell me what's the
2 issue here.

3 MS. SAVO: The issue here is that there is no Plea
4 Agreement and that my client isn't required to admit
5 anything that goes beyond what is necessary to prove the
6 elements of the offense.

7 THE COURT: Right. But how do we get to the issue
8 of whether he knows what that means? That's the concern.

9 Are we to assume by saying, "Minor engaged in
10 sexually explicit conduct," that anyone -- first let's just
11 take this away from Mr. Harrell for a moment -- that anyone
12 knows exactly what that means?

13 MS. SAVO: Because he has an attorney, and he's
14 been advised, and we've reviewed the discovery, and you are
15 going to ask him whether he has reviewed the discovery with
16 me. And you are going to ask him if he has told me
17 everything that he knows about the offense. I mean, it's
18 the entire plea colloquy. That's what the point of the plea
19 colloquy is.

20 And more importantly, Your Honor, I -- I have done
21 innumerable open pleas in this district on cases involving
22 child pornography where I have not been forced to admit
23 anything outside of the sheet.

24 My intent was to have the client plead open to
25 what was in the Indictment but because I knew that this was

1 going to become an issue I tried to resolve something with
2 the government.

3 But there is a point at which in this case I am
4 not going to yield any further. If the government wanted
5 its own factual basis, then it could have extended a plea
6 offer.

7 And what they are trying to include is -- really
8 goes to specific offense characteristics under the
9 sentencing guidelines, and it doesn't go really to the
10 elements of the offense.

11 THE COURT: Are you basically setting up an
12 argument that -- for sentencing as it relates to the
13 specific offense conduct? Is that what this is about?

14 MS. SAVO: I am not saying that. I am saying
15 that's their burden, and it's not part of what's necessary
16 to prove the elements, and it's not anything my client has
17 to admit at this time.

18 THE COURT: Okay. We're going to proceed, and
19 we'll see if we get to the finish line. If not, I guess
20 we'll just set it for trial.

21 MS. SAVO: If the prosecution wants to state that
22 it would prove those facts, on the record, the government is
23 welcome to do that. But it doesn't mean that my client has
24 to agree to those facts.

25 THE COURT: Right.

1 MS. SAVO: My client will plead to what is
2 necessary in order to prove the elements.

3 THE COURT: Are you suggesting that we should --
4 or I should read both, basically, or talk to Mr. Harrell
5 about the defense's proposed factual basis and then allow
6 the government to say, if the case went to trial, they
7 believe they would prove the following?

8 MS. SAVO: I am saying, if that's what the Court
9 wants to do, I have no objection to that. My objection is
10 the requirement that my client say that -- he has to admit
11 those facts.

12 THE COURT: Okay. Ms. Myers, what's your thought
13 about -- okay. It will take longer, unfortunately, but
14 okay.

15 Government, you articulate what you believe you
16 will be able to show if the case went to trial. I will ask
17 Mr. Harrell if he understands that, not whether or not he
18 admits to it, and then I will then have Ms. Savo read the
19 proposed factual basis, and I will ask him if he admits to
20 that, and he can say yes or no, and then we move forward.

21 MS. MYERS: Okay, Your Honor.

22 THE COURT: All right. Let's do that, then.
23 Okay.

24 It's my understanding Mr. Harrell wants to enter a
25 plea of guilty to Counts 1 through 5 and 7 through 24.

1 Is that correct, Ms. Savo?

2 MS. SAVO: Yes.

3 THE COURT: All right. Mr. Harrell, before I can
4 accept your plea of guilty, I need to make sure that you
5 understand your rights, understand the nature of this
6 proceeding. We're going to be here for probably 30 to 40
7 minutes because there is a lot of information I am going to
8 need to share with you and ask that you understand.

9 I think you know this but just in the abundance of
10 caution, if you have any questions, concerns at all, let me
11 know, we'll stop the proceeding and try to address your
12 concerns.

13 All right, sir?

14 THE DEFENDANT: Yes, sir. Thank you.

15 THE COURT: All right. And at this time I am
16 going to ask you to raise your right hand so that we can
17 administer the oath.

18 THE CLERK: You do solemnly swear that you will
19 make true answers to such questions that the Court will ask
20 you regarding your change of plea, so help you God?

21 THE DEFENDANT: Yes, I do, so help me God.

22 THE COURT: All right. Mr. Harrell, you can place
23 your right hand down.

24 You have now been placed under oath; so if you
25 answer any of my questions falsely, those answers can be

1 used in another prosecution for perjury or for making a
2 false statement.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes, sir, I do.

5 THE COURT: And do you understand that you have
6 the right to remain silent and not answer any of my
7 questions?

8 THE DEFENDANT: Yes, sir, I do.

9 THE COURT: Do you give up that right in order to
10 plead guilty today?

11 THE DEFENDANT: Yes, sir, I do.

12 THE COURT: Does counsel join?

13 MS. SAVO: Yes.

14 THE COURT: All right. So, Mr. Harrell, let me
15 ask you how old are you, sir?

16 THE DEFENDANT: Currently 27 years old, sir.

17 THE COURT: How many years of school have you
18 completed?

19 THE DEFENDANT: Completed high school as well as
20 some college curriculum courses, sir.

21 THE COURT: Have you been treated recently for any
22 mental illness or addiction to narcotics of any kind?

23 THE DEFENDANT: Mental illness, yes, sir. No
24 narcotics at this time.

25 THE COURT: Again, I don't mean -- it's not my

1 intention to pry, but I need to ask these questions.

2 So tell me about the treatment for mental illness,
3 how long ago was it, have you been prescribed any medication
4 to deal with it. Can you talk to me a little bit about
5 that, sir.

6 THE DEFENDANT: Yes, sir. I am currently I am
7 going to battle with anxiety, depression, PTSD, as well as
8 emotional burdens, and I have been medicating for the last
9 four years in response to psychiatric evaluations as well as
10 psychological evaluations as well as a treatment on a new
11 medication in regards to suicide.

12 THE COURT: And can you tell me specifically what
13 the medications are that you are taking right now.

14 THE DEFENDANT: I cannot, sir. I do not have the
15 complete list. It is extensive as well as it is varied.
16 This has been an ongoing treatment for the past couple
17 years, and my medications have been cycled on and off, and
18 at this location we are not readily given our prescription,
19 sir.

20 THE COURT: Okay. Is there -- when was the last
21 time you took your medication?

22 THE DEFENDANT: Last night, sir, at around 9:30,
23 9:45 P.M.

24 THE COURT: And is there anything about the
25 medications that you take or have taken in the past that

1 might impact your ability to understand what's happening
2 here today or your ability to make decisions with respect to
3 what you are doing this morning?

4 THE DEFENDANT: No, sir, I do not believe that.

5 THE COURT: And do you believe that you suffer
6 from any mental condition or disability that would prevent
7 you from understanding what's happening here today,
8 including understanding the charges against you and the
9 consequences to you of this guilty plea?

10 THE DEFENDANT: I do understand, and I do not
11 believe any of those will impact my cognitive ability today,
12 sir.

13 THE COURT: Is there any reason in your mind, sir,
14 why we should not go forward today?

15 THE DEFENDANT: No, sir, I have nothing to offer
16 in that regard.

17 THE COURT: Ms. Savo, have you talked to
18 Mr. Harrell about these proceedings?

19 MS. SAVO: I have, Your Honor. And subsequent to
20 our last status conference, I did have Ms. Barrow from my
21 office who is a PsyD speak with him, and then I subsequently
22 saw him myself, and I believe that at this time he is
23 capable of going forward.

24 THE COURT: Do you believe that he is in
25 possession of his faculties and is competent to proceed?

1 MS. SAVO: Yes.

2 THE COURT: Based on the statements of Mr. Harrell
3 and his counsel, I find the defendant in full possession of
4 his faculties and competent to proceed.

5 Now, Mr. Harrell, again if -- there are questions
6 that I need to ask that I think we all know the answer to,
7 but I just want to ensure for the record these facts.

8 Have you received a copy of the Indictment, the
9 written document that lays out the charges against you?

10 THE DEFENDANT: Yes, sir, I have.

11 THE COURT: Now, you have the right to have me
12 read the Indictment from beginning to end here in court.

13 Do you want me to read it to you at this time?

14 THE DEFENDANT: No, sir. I understand the content
15 of it.

16 THE COURT: All right. Now you have the following
17 constitutional rights that you will be giving up if you
18 plead guilty.

19 You have the right to plead not guilty, obviously,
20 and persist in that plea.

21 You have a right to a speedy and public trial. At
22 that -- and you also have the right to trial by jury. At
23 that trial, it's the government's burden to prove each and
24 every element of the offense beyond a reasonable doubt.

25 If you and the government agree, you could have

1 the case tried by the Court. I would hear the evidence, and
2 I would decide whether or not the government has proved its
3 case.

4 You have the right to have an assistance of a
5 lawyer like you have right now. And if you couldn't afford
6 a lawyer, one would be appointed for you free of charge.

7 At a trial, you would have the right to see and
8 hear the witnesses testify against you and have your lawyer
9 question those witnesses. You could have witnesses
10 subpoenaed and compelled to come testify on your behalf.

11 You could testify on your own behalf. But you
12 also have what is known as the privilege against
13 self-incrimination, which means that you have the absolute
14 right not to testify at a trial. And if we went to trial
15 and you did not testify, the fact that you did not testify
16 could not be used against you.

17 Lastly, you have the a right to appeal your
18 conviction and sentence if you went to trial and were
19 convicted.

20 Have you and Ms. Savo talked about all of those
21 rights?

22 THE DEFENDANT: Yes, sir, we have.

23 THE COURT: And do you understand all of those
24 rights?

25 THE DEFENDANT: Yes, sir, I do.

1 THE COURT: Do you have any questions of me about
2 any of those rights, sir?

3 THE DEFENDANT: Currently, no, sir.

4 THE COURT: Now, if I accept the plea today, you
5 are going to be incriminating yourself because you are going
6 to be admitting to a crime and you will have waived or given
7 up the right to a trial and all of the other rights that I
8 just described.

9 Do you understand that, sir?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: And do you give up all those rights in
12 order to plead guilty today?

13 THE DEFENDANT: I do, sir.

14 THE COURT: Ms. Savo, are you satisfied that the
15 waivers are knowingly, voluntarily, and intelligently made?

16 MS. SAVO: I am.

17 THE COURT: And do you join and concur in the
18 waivers?

19 MS. SAVO: I do.

20 THE COURT: Okay. So, Mr. Harrell, there is a
21 number of counts here.

22 And, Ms. Myers, please, I know you are checking,
23 but I just want to make sure I have gotten all the charges
24 here.

25 So Count 1 charges you with child exploitation

1 enterprise, in violation of Title 18 United States Code
2 Section 2252A(g).

3 Count 2 charges you with obtaining custody of a
4 child to produce child pornography, in violation of
5 Title 18 United States Code Section 2251A(b).

6 Counts 3 through 5 charge you with production of
7 child pornography, in violation of Title 18 United States
8 Code Sections 2251(a), (e), as well as the theory of aiding
9 and abetting the production of child pornography, in
10 violation of Title 18 United States Code Section 2(a).

11 Counts 7 through 23 charge you with production of
12 child pornography, in violation of Title 18 United States
13 Code Sections 2251(a), (e).

14 And then Count 24 charges you with possession of
15 child pornography, in violation of Title 18 United States
16 Code Section 2252(a)(4)(B) and 2252(b)(2).

17 Ms. Myers, have I covered all the charges in which
18 Mr. Harrell is pleading guilty to?

19 MS. MYERS: Yes, Your Honor.

20 THE COURT: So, Mr. Harrell, I am going to ask you
21 to listen carefully because the prosecution is going to
22 outline the elements of each of those charges. All right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right.

25 Ms. Myers, please.

1 MS. MYERS: For the defendant to be guilty of the
2 crime charged in Count 1, that is, child exploitation
3 enterprise, in violation of Title 18 United States Code
4 Section 2252A(g), the following must be true:

5 One, defendant knowingly produced, advertised,
6 transported, distributed, or received child pornography, in
7 violation of Chapter 10 Title -- sorry, Chapter 110 of
8 Title 18 United States Code as part of a series of felony
9 violations constituting three or more separate incidents;

10 Two, the incidents involved more than one victim;

11 And, three, the defendant committed those offenses
12 in concert with three or more other persons.

13 For defendant to be guilty of the crime charged in
14 Count 2, that is, obtaining custody of a child to produce
15 child pornography, in violation of Title 18 United States
16 Code Section 2251A(b), the following must be true:

17 One, defendant purchased or otherwise obtained
18 custody or control of a minor or otherwise offered to
19 purchase or otherwise obtained custody or control of a
20 minor;

21 Two, defendant, A, knew that as a consequence of
22 the purchase or obtaining of custody, the minor would be
23 portrayed in a visual depiction engaging in or assisting
24 another person to engage in sexually explicit conduct; or B,
25 defendant intended to promote either the engaging in of

1 sexually explicit conduct by such minor for the purpose of
2 producing any such visual depiction or the rendering of
3 assistance by the minor to any other person to engage in
4 sexually explicit conduct for the purpose of producing any
5 visual depiction of such conduct;

6 And, 3A, the minor or defendant traveled or was
7 transported in or affecting interstate or foreign commerce;

8 3B, the offer was communicated or transported
9 using any means or facility of interstate or foreign
10 commerce in or affecting interstate or foreign commerce by
11 any means including by computer or using the mail;

12 Or, 3C, the conduct took place in any territory or
13 possession of the United States.

14 For defendant to be guilty of the crime charged in
15 Counts 3, 4, 5, and 7 through 23, that is, production of
16 child pornography, in violation of Title 18 United States
17 Code Sections 2251(a) and (e), the following must be true:

18 One, at the time of the offense the victim was
19 under the age of 18 years;

20 Two, defendant employed, used, persuaded, induced,
21 enticed, or coerced the victim to take part in sexually
22 explicit conduct for the purpose of producing a visual
23 depiction of such conduct;

24 And, 3A, the visual depiction was actually
25 transported and transmitted using any means or facility of

1 interstate and foreign commerce and in or affecting
2 interstate commerce;

3 Or, B, the defendant knew or had reason to know
4 that the visual depiction would be transported or
5 transmitted using any means or facility of interstate or
6 foreign commerce or in or affecting interstate commerce;

7 Or, 3C, the visual depiction was produced or
8 transmitted using materials that had been mailed, shipped,
9 or transported in or affecting interstate or foreign
10 commerce by any means, including by computer.

11 For defendant to be guilty of aiding and abetting
12 the production of child pornography, as charged as an
13 alternative theory in Counts 3, 4, and 5, in violation of
14 Title 18 United States Code 2251(a), the following must be
15 true:

16 One, someone else committed the production of
17 child pornography;

18 Two, defendant aided, counseled, commanded,
19 induced or procured that person with respect to at least one
20 element of the production of child pornography;

21 Three, defendant acted with the intent to
22 facilitate the production of child pornography;

23 And, four, defendant acted before the crime was
24 completed.

25 For defendant to be guilty of the crime charged in

1 Count 24, that is, possession of child pornography, in
2 violation of Title 18 United States Code
3 Section 2252(a)(4)(B) and (b)(2), the following must be
4 true:

5 One, defendant knowingly possessed one or more
6 matter that defendant knew contained the visual depictions
7 of minors engaged in sexually explicit conduct;

8 Two, defendant knew that the visual depictions
9 showed minors engaged in sexually explicit conduct;

10 Three, defendant knew that the production of such
11 visual depictions involved use of a minor in sexually
12 explicit conduct;

13 And, four, the visual depiction had been either:
14 A, transported using any means or facility of interstate
15 commerce or in or affecting interstate commerce; or, B,
16 produced using materials that had been transported using any
17 means or facility of interstate commerce or in affecting
18 interstate or foreign commerce by computer or other means.

19 THE COURT: Mr. Harrell, did you understand
20 everything that the government just stated with respect to
21 the charges to which you are pleading guilty to and the
22 elements of those charges?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you and Ms. Savo talked about the
25 maximum and any mandatory minimum penalties that apply to

1 this case?

2 THE DEFENDANT: Yes, sir, we have.

3 THE COURT: And, sir, I am going to ask you to
4 listen again carefully because Ms. Myers is going to outline
5 those penalties for the record.

6 Ms. Myers.

7 MS. MYERS: The statutory maximum sentence that
8 the Court can impose for a violation of Title 18 United
9 States Code Section 2252A(g) is life imprisonment, a
10 lifetime period of supervised release, full restitution to
11 the victims of the offense, a fine of \$250,000 or twice the
12 gross gain or gross loss resulting from the offense
13 whichever is greatest, and a mandatory special assessment of
14 \$100, and a \$5,000 special assessment pursuant to
15 Title 18 United States Code Section 3014 if the Court
16 determines the defendant is not indigent.

17 The statutory maximum sentence that the Court can
18 impose for violation of Title 18 United States Code
19 Section 2251A(b) is life imprisonment, a lifetime period of
20 supervised release, full restitution of the victims of the
21 offense, a fine of \$250,000 or twice the gross gain or gross
22 loss resulting from the offense, whichever is greatest, a
23 mandatory special assessment of \$100 and a \$5,000 special
24 assessment pursuant to Title 18 United States Code Section
25 3014 if the Court determines defendant is non-indigent.

1 The statutory maximum sentence that the Court can
2 impose for each violation of Title 18 United States Code
3 Section 2251(a) and (e) is 30 years imprisonment, a lifetime
4 period of supervised release, full restitution to the
5 victims of the offense, a fine of \$250,000 or twice the
6 gross gain or gross loss resulting from the offense
7 whichever is greatest, a mandatory special assessment of
8 \$100, and a \$5,000 special assessment pursuant to
9 Title 18 United States Code Section 3014 if the Court
10 determines defendant is non-indigent.

11 The statutory maximum sentence that the Court can
12 impose for violation of Title 18 United States Code
13 Section 2252(a)(4)(B) and (b)(2) is 20 years imprisonment, a
14 lifetime period of supervised release, full restitution to
15 the victims of the offense, fine of \$250,000 or twice the
16 gross gain or gross loss resulting from the offense
17 whichever is greatest, and a mandatory special assessment of
18 \$100, and a \$5,000 special assessment pursuant to
19 Title 18 United States Code Section 3014 if the Court
20 determines that the defendant is non-indigent.

21 The total maximum sentence for all offenses to
22 which defendant is pleading guilty is lifetime imprisonment,
23 a lifetime period of supervised release, a fine of
24 \$5,750,000 or twice the gross gain or gross loss resulting
25 from the offenses whichever is greatest, a mandatory special

1 assessment of \$2,300, and a trafficking special assessment
2 of \$115,000 if the Court determines that the defendant is
3 non-indigent.

4 The statutory minimum sentence that the Court must
5 impose for a violation of Title 18 United States Code
6 2252A(g) is 20 years imprisonment, five years supervised
7 release, and mandatory special assessment of \$100.

8 The statutory minimum sentence that the Court must
9 impose for a violation of Title 18 United States Code
10 Section 2251A(b) is 30 years imprisonment, five years
11 supervised release, and mandatory special assessment of
12 \$100.

13 The statutory minimum sentence that the Court must
14 impose for a violation of Title 18 United States Code
15 Section 2251(a) is 15 years imprisonment, five years
16 supervised release, and mandatory special assessment of
17 \$100.

18 The statutory minimum sentence that the Court must
19 impose for a violation of Title 18 United States Code
20 Section 2252(a)(4)(B) is five years supervised release and a
21 mandatory special assessment of \$100.

22 Do you want me to read about supervised release,
23 Your Honor?

24 THE COURT: Yes, please.

25 MS. MYERS: Supervised release is a period of time

1 following imprisonment during which defendant will be
2 subject to various restrictions and requirements. If
3 defendant violates one or more of the conditions of any
4 supervised release imposed, defendant may be returned to
5 prison for all or part of the term of supervised release
6 authorized by statute for the offense that resulted in the
7 term of supervised release.

8 By pleading guilty, defendant may be giving up
9 valuable government rights, government benefits, and
10 valuable civic rights such as the right to vote, right to
11 possess a firearm, the right to hold office, and the right
12 to serve on a jury.

13 Once the Court accepts defendant's guilty plea, it
14 will be a federal felony for defendant to possess a firearm
15 or ammunition.

16 Convictions in this case may also subject
17 defendant to various other collateral consequences including
18 but not limited to revocation of probation, parole, or
19 supervised release in another case, and suspension or
20 revocation of a professional license.

21 There are unanticipated collateral consequences
22 that will not serve as grounds to withdraw defendant's
23 guilty plea.

24 If defendant is not a United States citizen, the
25 convictions in this case make it practically inevitable and

1 a virtual certainty that defendant will be removed or
2 deported from the United States. Defendant may also be
3 denied United States citizenship and admission to the
4 United States in the future.

5 While there may be arguments that defendant can
6 raise in immigration proceedings to avoid or delay removal,
7 removal is presumptively mandatory and virtual certainty
8 here. Removal and immigration consequences are the subject
9 of a separate proceeding and no one including defendant's
10 attorney or the Court can predict to an absolute certainty
11 the effects of his convictions on his immigration status.

12 Defendant nevertheless wants to plead guilty
13 regardless of any immigration consequences that his pleas
14 may entail even if the consequence is automatic removal from
15 the United States.

16 As a condition of supervised release under
17 Title 18 United States Code Section 3583(d), defendant will
18 be required to register as a sex offender. Independent of
19 supervised release, defendant will be subject to federal and
20 state registration requirements for a possible maximum term
21 of registration up to and including life. Under Title 18
22 United States Code Section 4042(c) notice will be provided
23 to certain law enforcement agencies upon defendant's release
24 from confinement following conviction.

25 Defendant must register and keep the registration

1 current in each jurisdiction in which the defendant resides,
2 is an employee or is a student. Requirements for
3 registration include providing, among other information,
4 defendant's true name, residence address, names and
5 addresses of any places where the defendant is or will be an
6 employee or student.

7 The requirement to keep the registration current,
8 including informing at least one jurisdiction in which the
9 defendant resides, is an employee, or is a student not later
10 than three business days after any change of the defendant's
11 name, residence, employment, or student status. Failure to
12 comply with these obligations subjects the defendant to
13 prosecution for failure to register under federal law,
14 Title 18 United States Code Section 2250, which is
15 punishable by a fine or imprisonment or both.

16 THE COURT: Thank you, Ms. Myers.

17 Mr. Harrell, I know there was a lot of information
18 that was just articulated, but did you -- A, did you
19 understand it; and, B, did you go over all of that
20 information with Ms. Savo before today?

21 THE DEFENDANT: Yes to A and B, sir.

22 THE COURT: All right. So, sir, you know -- do
23 you understand you are not eligible for a probationary
24 sentence in this case? Do you understand that?

25 THE DEFENDANT: I do, sir.

1 THE COURT: As Ms. Myers indicated, do you
2 understand, as a condition of your supervised release, you
3 are going to be required to register as a sex offender? Do
4 you understand that, sir?

5 THE DEFENDANT: Yes, sir, I do.

6 THE COURT: All right. And if you live, work, or
7 go to school in California, you are subject to the
8 registration requirements of California Penal Code
9 Section 290. Do you understand that, sir?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: If you are on probation or parole on
12 any other case, this plea could result in a violation or
13 revocation of that parole or probation and you could be
14 sentenced to prison on that other case. Do you understand
15 that, sir?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: As mentioned earlier, you understand
18 that you must pay full restitution to the victims in this
19 case? Do you understand that?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: Do you have any questions of me
22 regarding the potential sentence that you may receive if the
23 Court accepts your guilty plea?

24 THE DEFENDANT: No, sir, not at this time.

25 THE COURT: And have you discussed the possible

1 punishment, the facts of your case, and possible defenses
2 with Ms. Savo?

3 THE DEFENDANT: Yes, sir, I have.

4 THE COURT: Have you understood everything that
5 we've talked about this morning, sir?

6 THE DEFENDANT: Yes, sir. I understand.

7 THE COURT: All right. Now, sir, you are going to
8 be sentenced under what's known as the Sentencing Reform Act
9 of 1984. An organization out of Washington, D.C. called the
10 United States Sentencing Commission, they've issued
11 guidelines that judges must consult and take into account
12 but are not required to follow in determining a sentence in
13 a criminal case.

14 I will be looking at the guidelines as well as any
15 other factors under Title 18 United States Code Section
16 3553(a) -- your background, your personal circumstances,
17 your history, if you will.

18 Have you and Ms. Savo talked about how the
19 sentencing guidelines might be applied in this case?

20 THE DEFENDANT: Yes, sir, we have.

21 THE COURT: Now, regardless of the guideline
22 range, I could sentence you to up to the maximum that's
23 allowed by law. Do you understand that, sir?

24 THE DEFENDANT: Yes, sir, I do.

25 THE COURT: A presentence report will be prepared

1 in this case. You are going to have the opportunity to
2 review it, along with Ms. Savo, and so will the government.
3 Both sides can file any objections that you might have to
4 that report, and both sides will be able to file papers to
5 the Court indicating what you believe the appropriate
6 sentence should be. Do you understand that, sir?

7 THE DEFENDANT: Yes, sir, I do.

8 THE COURT: Now the sentence that I impose, it
9 could be greater than what your lawyer recommends. It could
10 be less than what your lawyer recommends. It could be
11 greater than what the government recommends or less than
12 what the government recommends. Do you understand that,
13 sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And the fact that you may be
16 disappointed with the sentence, that alone would not be a
17 reason -- well, you would not be able to withdraw your plea
18 just because you are dissatisfied with the sentence. Do you
19 understand that, sir?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: Now, has anyone made any promises,
22 representations, or guarantees of any kind in an effort to
23 get you to plead guilty today?

24 THE DEFENDANT: No, sir, they have not.

25 THE COURT: Has anyone attempted to threaten you,

1 family member, or anyone close to you in an effort to get
2 you to plead guilty today?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anyone told you that you will get
5 a specific sentence if you plead guilty today?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you pleading guilty voluntarily
8 and of your own free will?

9 THE DEFENDANT: Yes, I am, sir.

10 THE COURT: Ms. Savo, did you review the facts of
11 the case and all the discovery provided by the government
12 with Mr. Harrell?

13 MS. SAVO: Yes.

14 THE COURT: Did you pursue with him any potential
15 defenses that he might have?

16 MS. SAVO: Yes, I did.

17 THE COURT: Have you advised him concerning the
18 legality or admissibility of any of the statements or
19 confessions or any other evidence that the government has
20 against him?

21 MS. SAVO: Yes.

22 THE COURT: To the best of your knowledge, is your
23 client pleading guilty because of any illegally obtained
24 evidence in the possession of the government?

25 MS. SAVO: Not to my knowledge.

1 THE COURT: Did you and Mr. Harrell agree that it
2 was in his best interests to enter into this plea?

3 MS. SAVO: Yes.

4 THE COURT: Is it your opinion that Mr. Harrell is
5 entering this plea freely and voluntarily with a full
6 knowledge of the charges and the consequences to him of the
7 plea?

8 MS. SAVO: Yes.

9 THE COURT: Have there been any promises,
10 representations, or guarantees made to either you or
11 Mr. Harrell in connection with this plea?

12 MS. SAVO: No.

13 THE COURT: Other than a general discussion of the
14 guidelines, have you given Mr. Harrell any indication of a
15 specific sentence that this Court would impose in this case?

16 MS. SAVO: No, I have not.

17 THE COURT: Do you join in the waiver of jury
18 trial and concur in the plea?

19 MS. SAVO: Yes.

20 THE COURT: Ms. Myers, has the government made any
21 promises, representations, or guarantees to either
22 Mr. Harrell or Ms. Savo?

23 MS. MYERS: No, Your Honor.

24 THE COURT: Does the government waive jury trial?

25 MS. MYERS: Yes, Your Honor.

1 THE COURT: Mr. Harrell, back to you, sir.

2 Are you satisfied with the work that your lawyer
3 has done for you on the case?

4 THE DEFENDANT: Yes, sir, I am.

5 THE COURT: Have you told her everything that you
6 know about the case?

7 THE DEFENDANT: Yes, sir, I have.

8 THE COURT: Do you believe that she's fully
9 considered any defenses that you might have?

10 THE DEFENDANT: I do, sir.

11 THE COURT: Have you had enough time to talk with
12 her about the case?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you believe you understand the
15 consequences to you of this plea?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: Now, do you understand, sir, that, if
18 I accept the plea today, all that will be left in the case
19 is your sentence which will include prison time. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: Having in mind everything that we've
23 talked about this morning -- the rights that you will be
24 giving up, the maximum sentence, the mandatory minimum
25 sentence in these cases -- and these counts, I should say,

1 do you still want to plead guilty, sir?

2 THE DEFENDANT: Yes, sir, I do.

3 THE COURT: Now at this point, sir, I am going to
4 ask you to listen carefully because the government is going
5 to outline what it believes it will be able to prove at
6 trial, and then I am going to ask you some questions about
7 that.

8 MS. SAVO: Your Honor, may I make a suggestion, if
9 it's all right.

10 THE COURT: Go ahead.

11 MS. SAVO: Because there is so much overlap
12 between the two versions of the factual basis, I'd like to
13 propose that the Court allow me to read the defense version
14 and then ask the government to supplement. Otherwise, if
15 Ms. Myers reads her version, then I would be rereading most
16 of it. I just think there is potential for increased
17 confusion rather than less confusion.

18 THE COURT: Okay. Go ahead, Ms. Savo, go ahead,
19 you read yours first.

20 MS. SAVO: As to Count 1, Mr. Harrell, also known
21 as Soole, Fritters, Kronos, and The Dread King, was a member
22 of Website A, which was an Internet-based, members-only
23 bulletin board dedicated to the production, advertisement,
24 transportation, receipt, distribution, and possession of
25 child pornography depicting children five years old or

1 younger.

2 Mr. Harrell admits that he was a member of
3 Website A and that he made posts under the name Soole. When
4 Mr. Harrell was a member, Website A had over 1,000 members.
5 Its members used screen names to mask their identities,
6 followed security rules regarding remaining anonymous, and
7 needed to use a network that masked each member's Internet
8 protocol address.

9 Members could make posts to Website A that often
10 included child pornography images and videos and links to
11 child pornography. Members could make these posts in
12 different sections of Website A that were dedicated to child
13 pornography depicting children of certain ages and genders.

14 Website A also allowed members to ascend to
15 certain ranks based on the extent of that member's
16 participation in Website A, including the amount of child
17 pornography the member shared over the Website.

18 Mr. Harrell joined Website A on approximately
19 February 12th, 2016, and made approximately 155 posts to
20 other Website A users. For example, acting in concert with
21 co-defendant Brinson and other members of Website A,
22 Mr. Harrell made posts on Website A on November 3rd, 2016,
23 of Minor 14; January 12th, 2017, of Minor 5; and
24 April 15, 2017, of Minor 6; each of which constituted visual
25 depictions of child pornography, the production of which

1 involved the use of the minor engaging in sexually explicit
2 conduct.

3 Defendant Harrell knowingly posted and advertised
4 said visual depictions seeking and offering to receive in
5 exchange other visual depictions of minors engaged in
6 sexually explicit conduct. Mr. Harrell posted said visual
7 depictions on Website A using his computer, a means and
8 facility of interstate commerce, and in and affecting
9 interstate commerce.

10 As to Count 2, on or about September 24th, 2016,
11 Mr. Harrell took custody and control of Minor Victim 11 and
12 transported him to Co-defendant Brinson's residence for the
13 purpose of producing child pornography. While in
14 Mr. Harrell's custody, Mr. Harrell and Brinson created
15 images of Minor Victim 11 which constituted visual
16 depictions of Minor 11 engaged in sexually explicit conduct.
17 Mr. Harrell's offer to obtain custody of Minor 11 was
18 communicated using a cellular telephone network, that is, a
19 means or facility of interstate commerce.

20 As to Counts 3 through 5, between approximately
21 September 24th, 2016, and May 28th, 2017, Mr. Harrell and
22 Co-defendant Brinson, each assisting the other, created
23 images and/or videos of Minor Victims 3, 11, and 12, which
24 depicted lascivious displays of the genitals of those minors
25 or those minors engaged in sexually explicit conduct. Each

1 image or video was produced or transmitted using materials
2 that were manufactured outside of California.

3 As to Counts 7 through 20, between
4 approximately 2013 and May 28, 2017, Mr. Harrell created
5 images and/or videos of Minor Victims 5, 6, 7, 8, 9, 10, 13,
6 14, 15, 16, 17, 18, 19, and 20, each of which depicted the
7 lascivious display of the genitals of those minors or those
8 minors engaged in sexually explicit conduct. Each image or
9 video was produced or transmitted using materials that were
10 manufactured outside of California.

11 As to Counts 21 through 23, on approximately
12 May 19th, 2017, Mr. Harrell created images and/or videos of
13 Minor Victims 21, 22, and 23, which depicted the lascivious
14 display of the genitals of each of those minors. Each image
15 or video was produced or transmitted using materials that
16 were manufactured outside of California.

17 As to Count 24, on approximately May 28th, 2017,
18 Mr. Harrell possessed at least one electronic device that
19 contained images and videos of minors including minors who
20 were under 12 years old who are not Minor Victims 3 or 5
21 through 23, that depict the lascivious display of the
22 minors' genitals. These images were produced using
23 materials that had been transported across a state line into
24 California and/or had been transmitted via the Internet,
25 that is, a means or facility of interstate commerce.

1 All of Mr. Harrell's offenses described above took
2 place in whole or in part within the Central District of
3 California. He took these actions knowingly and
4 deliberately and not by mistake or accident.

5 THE COURT: Thank you, Ms. Savo. Let me just ask
6 a couple of questions before we shift over to Ms. Myers.

7 Mr. Harrell, did you understand everything that
8 your lawyer said about the facts that you are pleading
9 guilty to and admitting today?

10 THE DEFENDANT: Yes, sir, I did.

11 THE COURT: Is everything that Ms. Savo said about
12 you and your conduct and intent, is that all true and
13 correct?

14 THE DEFENDANT: Yes, sir, it is.

15 THE COURT: And are you pleading guilty because
16 you did the things charged in the counts in the Indictment
17 that you are pleading guilty to?

18 THE DEFENDANT: Yes, sir, I am.

19 THE COURT: And are you pleading guilty, sir,
20 because you are in fact guilty?

21 THE DEFENDANT: Yes, sir, I am.

22 THE COURT: Now, at this time I want you to listen
23 carefully to what the government is going to state because
24 they're going to outline what -- they are going to
25 supplement what has been discussed with what they believe

1 they will be able to prove at trial. So listen carefully,
2 sir. All right?

3 Ms. Myers.

4 MS. MYERS: Yes, Your Honor.

5 I have a redline here. So I was going just going
6 to read from the redline the facts that the government would
7 add. Do you think that would be clear enough?

8 THE COURT: That's fine.

9 MS. MYERS: Okay. And I would also ask the Court
10 to confirm with defendant and defense counsel that they've
11 received the list that identifies each minor victim by their
12 name.

13 THE COURT: All right. We'll deal with that at
14 the end. Go ahead.

15 MS. MYERS: Yes, Your Honor.

16 As connected to Count 1, on November 3rd, 2016,
17 Harrell made a post that contained a preview image
18 portraying smaller images including images that depicted a
19 close-up of Minor Victim 14's unclothed legs spread to show
20 her genitals in the middle of the image. The post also
21 included a link to the preview image and a link to download
22 the full-sized version of the smaller images along with
23 texts about the images. Minor Victim 14 was approximately
24 five years old at the time of the post.

25 Also connected to Count 1, the government, if this

1 case were to proceed to trial, the government would prove
2 the following beyond a reasonable doubt: On January
3 12th, 2017, Harrell made a post that contained a preview
4 image portraying smaller images including images that
5 depicted a close-up of Minor Victim 5's unclothed genitals
6 spread by Harrell's fingers. The post also included a link
7 for the preview image and a link to download full-sized
8 versions of the smaller images along with texts about the
9 images and the statement that there would be more. Minor
10 Victim 5 was less than two years old at the time of the
11 post.

12 Also connected to Count 1, if this case were to
13 proceed to trial, the government prove the following facts
14 beyond a reasonable doubt: That on April 15th, 2017,
15 Harrell made a post that included links to two image
16 previews of video files and links to the two video files as
17 well as texts describing the videos. One of the videos
18 depicted Minor Victim 6 being anally penetrated by Harrell's
19 penis. Minor Victim 6 was less than three years old at the
20 time of the post.

21 As to Count 2, if the case were to proceed to
22 trial, the government would prove the following additional
23 facts beyond a reasonable doubt: That while in
24 Defendant Harrell's custody, Harrell and Brinson created
25 images of Minor Victim 11 which depicted the lascivious

1 exhibition of Minor Victim 11's genitals and images that
2 depicted adult fingers touching Minor Victim 11's penis and
3 anus.

4 As to Counts 3 through 5, the government would
5 prove the following facts beyond a reasonable doubt if the
6 case were to proceed to trial: Between approximately
7 September 24th, 2016, and May 28, 2017, Harrell and Brinson
8 each assisting the other created images or videos of Minor
9 Victims 3, 11, and 12 which depicted lascivious displays of
10 the genitals of Minor Victims 3, 11, and 12, as well as
11 Harrell and/or Brinson orally copulating, masturbating, or
12 anally penetrating Minor Victims 3, 11, and 12. At all the
13 relevant times Minor Victim 3 was less than eight years old,
14 and Minor Victim 12 was less than four years old.

15 As to Counts 7 through 20, if the case were to
16 proceed to trial, the government would prove the following
17 facts beyond a reasonable doubt: Between approximately 2013
18 and May 28, 2017, Harrell created images and/or videos of
19 Minor Victims 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19,
20 and 20, each of which depicted the lascivious displays of
21 the genitals of those minors or depicted Harrell orally
22 copulating, masturbating, or anally penetrating those
23 minors. Each image or video was produced or transmitted
24 using materials manufactured outside of California. At all
25 relevant times Minor Victims 5, 6, 7, 8, 9, 10, 13, 14, 15,

1 16, 17, 18, 19, and 20 were less than ten years old.

2 As to Counts 21 through 23, the government would
3 prove the additional facts that at all relevant time Minor
4 Victims 21, 22, and 23 were less than seven years old.

5 Those are the additional facts that the government
6 would introduce, among others, beyond a reasonable doubt if
7 the case were to proceed to trial.

8 THE COURT: All right.

9 Mr. Harrell, did you understand everything that
10 the government said about what it believes it would prove if
11 the case were to go to trial? Did you understand what she
12 said, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, I am going to ask Ms. Savo
15 first.

16 Ms. Savo, did you receive a list that outlines the
17 names of the minor victims that have not been identified
18 publicly here in court?

19 MS. SAVO: Yes.

20 THE COURT: Did you go over that list with
21 Mr. Harrell?

22 MS. SAVO: Yes.

23 THE COURT: Mr. Harrell, just want to confirm.
24 Did you receive -- did you go over the list of names that
25 have been referenced in this morning as minor victims,

1 et cetera, throughout the course of this proceeding?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you understand who each of those
4 victims are by name. Correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. So let me ask.

7 Is the government satisfied with the factual basis
8 at this time?

9 MS. MYERS: Yes, Your Honor.

10 THE COURT: Do counsel agree that the Court has
11 complied with the requirements of Rule 11?

12 Ms. Myers?

13 MS. MYERS: Yes, Your Honor. And just to confirm,
14 that defendant understands that each of the minor victims
15 was under 18.

16 THE COURT: All right. I believe that's been
17 stated but just in an abundance of caution, Mr. Harrell, do
18 you understand that each of the minor victims that have been
19 named -- or discussed this morning were under the age of 18?
20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right.

23 Anything else, Ms. Myers?

24 MS. MYERS: No, Your Honor.

25 THE COURT: Ms. Savo, do you agree that the

1 Court's complied with the requirements of Rule 11?

2 MS. SAVO: Yes.

3 THE COURT: So, Mr. Harrell, in case 17-404, how
4 do you plead to Counts 1 through 5 and 7 through 24?

5 THE DEFENDANT: Guilty, Your Honor.

6 THE COURT: So, sir, I am going to make certain
7 findings. Again, if you don't understand what I am saying
8 or have any questions about what I'm saying, please let me
9 know. We'll stop the proceedings to try to address those
10 issues.

11 In the case of United States versus Arlan Wesley
12 Harrell, the Court having questioned Mr. Harrell on -- and
13 his counsel on the offer to plead guilty to Counts 1 through
14 5 and 7 through 24 of the Indictment, all of which are
15 felonies, Mr. Harrell and his counsel advised the Court that
16 they've conferred concerning the offered pleas and all
17 aspects of the charges against Mr. Harrell and any defenses
18 that he may have and the Court having observed Mr. Harrell's
19 intelligence, his demeanor, and attitude while answering the
20 questions, and the Court having observed that he does not
21 appear to be under the influence of any medicine, drug, or
22 other substance or factor that might affect his actions or
23 judgment in any manner; so I find that he is fully competent
24 and capable of entering the plea, he is aware of the nature
25 of the charges and the consequences of the plea and that the

1 plea is knowingly, voluntarily, and intelligently made with
2 a full understanding of the nature of the charges, the
3 consequences to him of the plea, his constitutional rights;
4 and I further find the plea's supported by independent
5 factual basis containing each of the essential elements of
6 each offense. So I will accept the plea and order that the
7 plea be entered.

8 As I mentioned to you earlier, Mr. Harrell, there
9 is going to be a written presentence report that will be
10 prepared. You will have a chance to look at it. So will
11 your lawyer. So will the government. You all will have a
12 chance to file any objections, and we'll have a hearing to
13 discuss your sentencing. And at that time of your
14 sentencing, you can speak to the Court directly before I
15 sentence you.

16 So I am going to refer the matter to the probation
17 office for a presentence report in this case. The proposed
18 date for sentencing is November the 5th at 11:00 A.M.

19 Does that date work for counsel?

20 Starting with the government.

21 MS. MYERS: That date is fine for the government,
22 Your Honor.

23 THE COURT: Ms. Savo?

24 MS. SAVO: That's fine.

25 THE COURT: Okay. So November 5th at 11:00 A.M.

1 You are ordered to appear at that date and time
2 without any further order or notice of the Court. We're
3 going to vacate the jury trial date in this case as it
4 relates to Mr. Harrell and the status conference of
5 July 23rd.

6 Anything further from the government?

7 MS. MYERS: No, Your Honor.

8 THE COURT: Ms. Savo, anything further?

9 MS. SAVO: Not at this time.

10 THE COURT: All right, sir. You are remanded back
11 to the custody of the marshal until your sentencing date.

12 Thank you, all. Stay safe, and I will see you all
13 in November.

14 Although, Ms. Savo, I guess I will see you I think
15 later this afternoon. Is that right?

16 MS. SAVO: I am making your long day.

17 THE COURT: You are going to be here in the
18 courtroom?

19 MS. SAVO: Yes.

20 THE COURT: I will see you then.

21 Thank you all. Be safe.

22 (Proceedings concluded at 9:10 a.m.)

23 --oOo--

24

25

CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: May 24, 2022.

/S/ CHIA MEI JUI

Chia Mei Jui, CSR No. 3287